F. M. S. REPORTS.

[APPELLATE CIVIL JURISDICTION]

HOWES, J.

July 30, 1940.

LALL SINGH vs. PARMANAND.

[PERAK MAGISTRATE'S CIVIL APPEAL No. 17 of 1940]

Land Code (Cap. 138), section 138—Chargee's notice—Omission to state amount due—Incomplete statement of period of default—Registration prior to sufficient stamping—Validity.

The chargee's notice was in the form set out in Schedule XXIX of the Land Code. It alleged default in payment, but did not state the amount due. It was alleged that the default had continued for 11 years, whereas it had continued for over 11 years and two months. The charge itself was insufficiently stamped when registered on the 1st November, 1927. Subsequently the deficient stamps were affixed and bore the stamp of the Stamp Office dated the 5th November, 1927. Notwithstanding these objections, the Collector of Land Revenue made an order for sale of the charged land, and the chargor appealed under section 237 of the Land Code.

Held, that the form in Schedule XXIX of the Land Code provides a general notice, with which the notice under review complied. A chargor can learn the exact amount payable by enquiry, and once the matter comes before the Collector of Land Revenue, under section 142 of the Land Code, it is for him to determine the amount due before he makes the order for sale.

The period of default was incorrectly stated and possibly in future cases it might be wiser to state that the default had continued for over a certain period. **(In this case the objection was not sustained).**

The charge was registered and later sufficiently stamped. Having been passed by the registering authority as fit for registration, it cannot at this late stage be impeached on the ground that it was not sufficiently stamped at the time of registration.

Case referred to:

(1) *Ragavaniadoo v. Supramaniam Chetty* (1914) 1 F.M.S.L.R. 139.

E. C. Watson for appellant.

S. Seenivasagam and M. Diamond for respondent.

Howes, J.—This matter comes before me by way of petition of appeal under section 237 (1) of the Land Code (Cap. 138).

The arguments have been confined to two main points which were taken before the Collector at the hearing of the application before him. One was that the notice given by the chargee to the chargor was defective, in that it did not state the amount due under the charge, as principal and interest. It was alleged that a sum of $103.60 has already been paid as interest under the first charge, or rather, was made to form part of the principal of the second charge which was given in October, 1927.

As regards the notice, it follows the form set out in Schedule No. XXIX to the Land Code, and in that form there is no suggestion there that details of the sums owing should be given. It is a general notice, and the chargor is in just as good a position to know how much he owes, as the chargee is to say how much he is claiming. There is nothing untrue in the notice which stated that default had been made by failure to pay the principal and interest thereby secured, even if one payment of interest had been accounted for by inclusion in the second charge.

Mr. Watson objects to the "11 years" mentioned in the notice. In fact, the default had continued for 11 years 2 months and a certain number of days. Possibly, in future cases it might be wiser to state that the default had continued for *over* a certain number of years. If it had been "over 11 years" I do not think that this objection could have been raised.

The other part of the notice required the chargor to pay the money due and owing within three months from its date. If the chargor wished to know the exact amount, he could have enquired. So, I can see no defect in the form of the notice, especially as, once the application comes before the Collector, under section 142 of the Land Code, it is for the Collector to determine the amount due by the chargor before he makes the order of sale. In the case of *Ragavaniadoo v. Supramaniam Chetty*[1], it was held that under the old Land Enactment, this was the duty of the Collector, in order to ascertain how much land it would be necessary to sell in order to pay the amount due.

The next objection was that the second charge was not at the time of registration properly stamped. This appears from the stamps which were on charge No. 91/27. From the actual charge, it appears that someone thought the proper stamp duty would be $2.50, and it was marked accordingly in pencil. Then, this amount in stamps was affixed in Ipoh with a certificate by the Collector of Land Revenue "stamped in due time." The document was then registered on the 1st of November, only bearing the stamps to the value of $2.50 instead of $3, which was the correct amount which should have been on it. From the document it now appears that a further 50 cents stamp was affixed, and bears the stamp of the Stamp Office dated 5th of November, 1927.

Mr. Watson for the chargor has contended that as the document was not properly stamped it should not have been registered; and suggests that under section 43 of the Stamp (Amendment) Enactment 1937 the document cannot be registered unless duly stamped. The fact remains that it was registered whether it was duly stamped or not, and it having been passed by the registering authority as being fit for registration once the document is on the register, it can, at this late stage only be impeached on the ground of some error or that the document was insufficient or void. In this case, there is no question of revenue having been defrauded. Someone, we do not know who, put that stamp on. It may have been the Collector of Land Revenue himself, when he realised the mistake. Anyhow, as it is, the document bears in stamps the correct amount of the duty for a charge.

Mr. Seenivasagam for the respondent has quoted a number of cases, especially Indian cases, one of which in particular reported in *23 Calcutta Weekly Notes, page 534*, says that improper registration cannot possibly affect the validity of the document.

The chargee in this case is seeking to exercise his rights under the charge, and I can see nothing to prevent him doing so, as fully as he wishes.

The petition must be dismissed with costs.

Petition dismissed with costs.

[APPELLATE CIVIL JURISDICTION]

CUSSEN, J.

July 22, 1940.

CHAN CHEONG THENG

vs.

CHAN PHOOI HOONG.

[SELANGOR CIVIL SUIT No. 54 of 1940]

Civil Procedure Code (Cap. 7), section 460—Summary Procedure—Conditional leave to defend.

The plaintiff sued, by way of summary procedure, for the sum of $25,000 promised to be paid by the defendant under a written document. The consideration stated consisted of the cancellation of certain liabilities by a deceased third party to the plaintiff.

In his application for leave to defend, an affidavit was filed by the defendant alleging that the document had been given subject to the condition that the plaintiff would produce proof of these liabilities: this had not been done: at the time of making the document the claims were barred by limitation and there was no consideration for the promise to pay: and lastly the document was procured by fraudulent misrepresentation.

The plaintiff filed an affidavit in reply purporting to dispose of these allegations, and no answer to this affidavit was filed when the application was heard by the Registrar.

The Registrar gave leave to defend, conditionally upon the defendant finding security in the sum of $25,000. The defendant appealed, and during the hearing of the appeal was allowed to file further affidavits in answer to the plaintiff's reply.

Held, that sub-section (ii) of section 460 of the Civil Procedure Code requires, before any question of ordering security can arise, that the Court must either think the defence not to be **prima facie** sustainable or feel a reasonable doubt as to its good faith. But when the Court so thinks or feels that does not mean that an order for security must follow as a matter of course. There still remains a discretion to be exercised as to whether or not an order for security should be made.

APPEAL FROM REGISTRAR.

B. J. P. Joaquim and H. Y. Teh for defendant.

Sub-section (i) of section 460 of the Civil Procedure Code is for practical purposes the same as O. XIV, r. 1. The English authorities make it clear that in this case, having regard to this sub-section by itself, unconditional leave to defend should have been given.

Sub-section (ii) does not enlarge a plaintiff's right to security: it narrows it in this way, that even when conditions might be imposed under sub-section (i) by itself, still they shall not be imposed unless the requirements of sub-section (ii) are also present.

E. D. Shearn for plaintiff.

Having regard to sub-section (ii) the principles laid down in *Jacobs v. Booths' Distillery* (1901) 85 L.T. 262 do not apply to our Code. The Registrar thinking that the defence was not *prima facie* sustainable and feeling a reasonable doubt as to its good faith, it cannot be said that he was wrong in ordering security.

Cussen, J.—This is an appeal against an order made by the Registrar under section 460 of the Civil Procedure Code, requiring the defendant, as a condition of being granted leave to defend the suit, to pay into Court or give security for the payment of the amount claimed in the suit, i.e., $25,000.

Section 460 of the Civil Procedure Code reads as follows:

> "460. (i) The Court shall, upon application by the defendant, give leave to defend the suit, upon the defendant paying into Court the sum mentioned in the summons or upon evidence, satisfactory to the Court, which discloses a defence or such facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.